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No. 400

In the Supreme Court of the United States

OCTOBER TERM, 1946

NORTHERN PACIFIC RAILWAY COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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MEMORANDUM FOR THE UNITED STATES

The decision of the court below involves the interpretation of Section 321 (a) of the Transportation Act of 1940, 54 Stat. 898, 954 (49 U. S. C. 65 (a)) which entitles "military or naval property of the United States moving for military or naval and not for civil use" to land-grant railroad rates.

There are now pending in this Court two cases on writs of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit, No. 56, *United States* v. *Legh R. Powell, Jr.* and *Henry W. Anderson, as receivers of the properties and assets of Seaboard Air Line Railway Company,*

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and No. 57, *United States* v. *Atlantic Coast Line Railroad Company,* also involving the same provision of Section 321 (a) of the Transportation Act of 1940. In Nos. 56 and 57, the Government property in question was phosphates lend-leased in 1941 to Great Britain for use there as farm fertilizer. In the instant case, as the petition for a writ of certiorari indicates, there are involved five separate shipments not connected with lend-lease aid: copper cable for degaussing equipment for Maritime Commission cargo vessels; lumber for construction of a War Department ammunition plant; lumber for Marine Corps military bridges; bowling alley equipment for recreation of civilian personnel erecting a naval base at Dutch Harbor, Alaska, and later for military personnel stationed there; and liquid paving asphalt for the construction of runways at a Civil Aeronautics Administration airport at Cold Bay, Alaska, to be used by naval planes in the defense of the territory.

While we regard the decision of the court below in the instant case as correct, we believe that the case presents an appropriate complement to Nos. 56 and 57, which affords the Court an occasion to resolve, at this Term, practically all of the currently disputed issues as to the proper interpretation of Section 321 (a). Accordingly, we do not oppose the granting of the writ, and we

request that, if the writ issues, the case be set down for argument immediately after Nos. 56 and 57.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

SEPTEMBER 1946.

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